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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 CHARLES E. MAYNARD,
12
13 vs. Plaintiff,
14 MIDLAND CREDIT MANAGEMENT,
15 INC.,
16 Defendant.

CASE NO. 15cv1124-LAB (KSC)

**ORDER GRANTING APPLICATION TO
PROCEED *IN FORMA PAUPERIS* AND
DISMISSING COMPLAINT WITH
LEAVE TO AMEND**

17 Plaintiff Charles Maynard, currently incarcerated at Federal Correctional Institution,
18 Otisville in Otisville, New York, has filed an action under the Fair Debt Collection Act (FDCA)
19 against Midland Credit Management, Inc. (Docket no. 1.)

20 Maynard alleges that he contacted Midland after noticing that Midland had made an
21 inquiry on his credit file. (Docket no 1, ¶ 10.) In response, Midland sent Maynard a letter
22 seeking to collect a debt on behalf of Bank of America. (*Id.*, ¶ 11.) Maynard alleges that this
23 violated 15 U.S.C. §§ 1692e(2)(A), 1692f(1), and 1692e(5) because the letter misrepresented
24 the debt, attempted to collect an amount not authorized by the agreement creating the debt,
25 and threatened to report Maynard's non-payment of time-barred debt. (*Id.*, ¶¶ 12–14.)

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28 Maynard didn't pay the civil filing fees required by 28 U.S.C. § 1914(a) to commence

1 a civil action; instead he has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant
2 to 28 U.S.C. § 1915(a) (Docket no. 2.)

3 **I. Motion to Proceed IFP**

4 All parties instituting any civil action, suit or proceeding in a district court of the United
5 States, except an application for writ of habeas corpus, must pay a filing fee. See 28 U.S.C.
6 § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only
7 if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). See *Rodriguez v.*
8 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the plaintiff is a prisoner, as Maynard
9 is here, he may be granted leave to proceed IFP, but he remains obligated to pay the full
10 entire fee in "increments," see *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015),
11 regardless of whether his action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2);
12 *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

13 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act ("PLRA"),
14 prisoners seeking leave to proceed IFP must submit a "certified copy of the trust fund
15 account statement (or institutional equivalent) for the . . . six-month period immediately
16 preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d
17 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court assesses
18 an initial payment of 20% of (a) the average monthly deposits in the account for the past six
19 months, or (b) the average monthly balance in the account for the past six months, whichever
20 is greater, unless the prisoner has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. §
21 1915(b)(4). The institution having custody of the prisoner then collects subsequent
22 payments, assessed at 20% of the preceding month's income, in any month in which the
23 prisoner's account exceeds \$10, and forwards those payments to the Court until the entire
24 filing fee is paid. See 28 U.S.C. § 1915(b)(2).

25 In support of his IFP Motion, Maynard has submitted a prison certificate attesting as
26 to his trust account balance and activity for the six-month period prior to the filing of his
27 Complaint as required by 28 U.S.C. § 1915(a)(2) and S.D. Cal. CivLR 3.2. *Andrews*, 398
28 F.3d at 1119. This certificate shows that Maynard has had a average of \$201.00 in monthly

deposits, has carried an average balance of \$33.23, and had \$1.03 in available funds to his credit at the time of filing. See 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil action or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee."); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a "safety-valve" preventing dismissal of a prisoner's IFP case based solely on a "failure to pay . . . due to the lack of funds available to him when payment is ordered.").

Therefore, the Court **GRANTS** Plaintiff's Motion to Proceed IFP (Docket no. 2), and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350 balance of the filing fees due for this case must be and forwarded to the Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

II. Sua Sponte Screening per 28 U.S.C. § 1915(e)(2) and § 1915A

A. Standard

The PLRA also obligates the Court to review complaints filed by all persons proceeding IFP, and by those, like Maynard, who are "incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary program," "as soon as practicable after docketing." See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Pursuant to these statutes, the Court must sua sponte dismiss complaints, or any portions thereof, which are frivolous, malicious, fail to state a claim, or which seek damages from defendants who are immune. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

All complaints must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "Determining whether a complaint

1 states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing
 2 court to draw on its judicial experience and common sense." *Id.* The "mere possibility of
 3 misconduct" falls short of meeting this plausibility standard. *Id.*; see also *Moss v. U.S. Secret*
 4 *Service*, 572 F.3d 962, 969 (9th Cir. 2009).

5 "When there are well-pleaded factual allegations, a court should assume their veracity,
 6 and then determine whether they plausibly give rise to an entitlement to relief." *Iqbal*, 556
 7 U.S. at 679; see also *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) ("[W]hen
 8 determining whether a complaint states a claim, a court must accept as true all allegations
 9 of material fact and must construe those facts in the light most favorable to the plaintiff.");
 10 *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that § 1915(e)(2) "parallels
 11 the language of Federal Rule of Civil Procedure 12(b)(6)").

12 However, while the court "ha[s] an obligation where the petitioner is pro se, particularly
 13 in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit
 14 of any doubt," *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v.*
 15 *Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not, in so doing, "supply essential
 16 elements of claims that were not initially pled." *Ivey v. Board of Regents of the University of*
 17 *Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

18 **B. Discussion**

19 As currently pleaded, Maynard's complaint fails to state a claim because he has failed
 20 to allege any *facts* which "might plausibly suggest" that Midland has violated the FDCA. The
 21 complaint doesn't state when the debt was incurred; the terms of the agreement under which
 22 the debt was created; how Midland misrepresented the "character, amount, and legal status"
 23 of the debt; the true character, amount, and legal status of Maynard's debt; or facts regarding
 24 the alleged charge-off of the debt. It merely states, in conclusory fashion, that Midland has
 25 violated the law. This is insufficient, and mandates dismissal of Maynard's complaint.

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27 **C. Leave to Amend**

28 Fed. R. Civ. P. 15(a)(2) provides that "[t]he court should give leave [to amend] freely

1 when justice so requires." Thus, Maynard is given leave to amend his complaint to allege
2 *facts* as opposed to mere legal conclusions.

3 **III. Conclusion and Order**

4 For the reasons set forth above, the Court:

5 (1) **GRANTS** Maynard's Motion to Proceed IFP (Docket no. 2);

6 (2) **DIRECTS** the Warden of Federal Correctional Institution, Otisville, or his
7 designee, to collect from Plaintiff's prison trust account the \$350 filing fee owed in this case
8 by collecting monthly payments in an amount equal to twenty percent (20%) of the preceding
9 month's income and forwarding them to the Clerk of the Court each time the amount in his
10 account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS MUST**

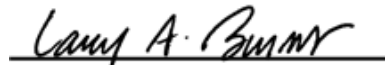
11 **BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION;**

12 (3) **DIRECTS** the Clerk of the Court to serve a copy of this Order on Warden of
13 Federal Correctional Institution, Otisville, P.O. Box 600, Otisville, NY 10963; and

14 (4) **DISMISSES** this civil action with leave to amend for failing to state a claim
15 upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b).
16 If Maynard thinks he can successfully amend his complaint, he must file the amended
17 complaint no later than August 3, 2015.

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19 **IT IS SO ORDERED.**

20 DATED: June 5, 2015

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22 **HONORABLE LARRY ALAN BURNS**
23 United States District Judge
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